

**REMARKS**

Reconsideration and allowance of the subject application are respectfully requested.

Claims 1-4, 10, 11, 14, 16, 26-28, 31, 34, 35, 38, 39 and 41 stand rejected under 35 U.S.C. §102(b) as being anticipated over U.S. Patent 5,991,286 to Labonte et al. This rejection is respectfully traversed.

Labonte describes a method for selecting between different modulation levels for transmitting packet data in a cellular system. More particularly, Labonte relates to a D-AMPS+ system which includes a low-level modulation packet control channel, a high-level modulation packet control channel, a low-level modulation packet traffic channel, a high-level modulation packet traffic channel. Labonte provides a method for selecting and transitioning between the low and high-level modulation packet control/traffic channels. The Examiner relies specifically on column 7, which describes the mobile station optionally receiving from the base station a signal quality measurement of the uplink channel. The mobile decides "whether the signal quality uplink and downlink is sufficient for packet data communications."

Regarding the independent claims, Labonte fails to disclose that the feedback signaling "is an acknowledge signal, a negative acknowledge signal, or a lost signal corresponding to a data packet transmitted over the first channel." Labonte also does not teach "delaying transmission of data packets over the first channel until the quality of the second channel exceeds a predetermined threshold." With Labonte lacking features recited in the claims, the Labonte rejection should be withdrawn.

Claims 1-5, 10-14, 16, 23-28, 31, 32, 34-39, 41, and 48-50 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. 6,522,888 to Garceran et al. This rejection is respectfully traversed.

Garceran discloses a method to determine wireless coverage using information received from a mobile unit. Particularly, the Examiner relies on the text in column 3, which describes the radio network using various information including uplink and downlink signal quality measurements to the RF coverage for a particular geographical location.

Like Labonte, Garceran fails to disclose each and every feature of the independent claims as required for anticipation. Garceran addresses a totally different problem from that addressed in the instant application. Garceran is concerned with locating the mobile station rather than controlling the transmissions from data packets over the first channel based on the quality of the second channel exceeding a predetermined threshold. The Examiner even admits that Garceran does not describe using the ARQ protocol and that Garceran does not delay data transmission over the downlink. The anticipation rejection based on Garceran should be withdrawn.

Claim 6-9, 15, 17-22, 29, 30, 33, 40, and 42-47 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Garceran in view of U.S. Patent 6,226,283 to Neumiller. This rejection is respectfully traversed.

Neumiller describes assigning a frame quality indicator to each frame received by a base station and forwarding those indicators to a decision-making entity to determine which base station has the best indicator to forward that frame to a switch. Neumiller makes only a passing reference to ARQ in column 4, lines 3-5, explaining that the frame quality indicator is "preferably quality bits from the forward error correction (FEC) function that is used on the radio channel. The FEC function may or may not involve an additional automatic repeat request (ARQ) on the link." There is no teaching in Neumiller of determining the condition of the channel which carries the ARQ feedback.

Nor is there any motivation to determine the signal quality of the ARQ feedback channel in order to determine whether to delay transmission on the downlink channel. The delay to which the Examiner refers in Neumiller corresponding to delay circuitry 205 does not relate to detection of a signal condition of the ARQ channel. Nor is the delay even related to the content of an ARQ signal. Rather, the delay circuitry 205 delays frames for an amount of time so that frames from all base stations in soft handover with a particular mobile enter the frame selector 207 simultaneously. See column 5, lines 16-29.

The Examiner's attempt to combine Neumiller with Garceran is at best a hindsight "forced" attempt to reconstruct the invention. Delaying frames so that frames from all base station in a soft handover with a particular mobile enter into a frame selector simultaneously is not the same thing as delaying transmission of data packets over a first channel (e.g., a downlink channel) until the quality of a second channel (e.g., an uplink channel) exceeds a predetermined threshold. Neumiller and the claimed invention perform different types of delays to achieve different objectives.

The Federal Circuit requires that an "Examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with knowledge of the claimed invention, would select the elements from the cited prior art references for the combination in the manner claimed." *In re Rouffet*, 149 F.3d 1350, 1357 (Fed. Cir. 1998). Delaying to make sure that the best received frame from all base stations involved in the soft handoff is forwarded to switch 101 for processing has nothing do with channel-dependent scheduling that takes into account the quality of the opposite direction channel. In the non-limiting, example situation in which the scheduling is for a downlink channel, a determination is made of the uplink channel quality. If the uplink channel quality is poor, for example, due to fast fading or the like, it is better to delay

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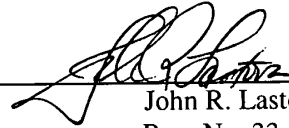
sending data from the base to that mobile station until the quality on the uplink in the mobile station to the base station improves. Neumiller simply does not disclose or even contemplate this kind of radio transmission scheduling decision making. The obviousness rejection is improper and should be withdrawn.

The application is now in condition for allowance. An early notice to that effect is earnestly solicited.

Respectfully submitted,

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